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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 3rd November, 2017

+ **MAC APPEAL 464/2011**

NATIONAL INSURANCE CO. LTD. Appellant
Through: **Mr. Pankaj Seth, Adv.**

versus

HARI OM CONST. & ORS. Respondents
Through: **Mr. Pramod Kumar Kharwar,**
Adv.

AND

+ **MAC APPEAL 782/2011**

HARI OM
Through: **Mr. Pramod Kumar Kharwar,**
Adv.

versus

LEKH RAJ SINGH & ORS. Respondents
Through: **Mr. Pankaj Seth, Adv. for R-3**

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Constable Hari Om, the claimant (appellant in MAC Appeal No.782/2011) was on official duty with his colleague Constable Rajinder Singh, both moving on motor cycle on 17.02.2009 when their vehicle was hit by a tempo bearing registration no.HR 38 K 7828 (the

tempo) in the area of Police Station Kashmiri Gate, Delhi causing injuries to each of them. Two accident claim cases were instituted, including one (suit no.268/2009) on 17.07.2009 by the claimant. In each case, the driver, owner and insurer of the truck were impleaded as party respondents, the insurer (National Insurance Company Ltd.) now being in appeal (MAC Appeal No.464/2011).

2. The two cases were clubbed and an inquiry was held. Upon conclusion, the tribunal passed a common judgment dated 05.02.2011 accepting the case that the accident had occurred resulting in injuries being suffered by the claimants due to the negligent driving of the truck holding the said driver and owner of the truck, jointly and severally, liable to pay compensation.

3. The tribunal awarded total compensation in the sum of Rs. 21,94,082/-, it inclusive of Rs.41,100/- towards physiotherapy charges, Rs.30,000/- towards special diet and conveyance, Rs.1,13,646/- towards loss of earnings, Rs. 16,000/- towards future medical expenses, Rs.18,18,336/- on account of loss of future income due to disability, Rs.1 lakh towards pain and suffering besides Rs.75,000/- as damages on account of future enjoyment. The liability to pay the said amount was fastened on the insurer, the element of interest having been added.

4. The tribunal has found, on the basis of the evidence, that the claimant had suffered multiple fractures including of the right femur, tibia and fibula bones besides dislocation of the elbow and other injuries. The treatment had continued for a period of six months during which the claimant underwent several surgical procedures that

included reconstruction of the right elbow. In spite of such medical treatment, he has been rendered permanently disabled, his disability having been certified (Ex.PW 2/1) by a board of doctors to the extent of 45%, this condition on account of fracture and dislocation of the left elbow, nailing of right tibia and femur bone leading to ankylosis of right ankle, knee and hip.

5. The tribunal included in the award the loss of earning for six months calculating it on the then total emoluments of Rs.18,941/- earned per month by the claimant and multiplied it by the period of six months.

6. It noted that the claimant was 32 years old on the date of the accident and it was assumed that there would be a loss of income due to disability in future and the multiplier of 16 applied for such purposes.

7. There is some confusion in the judgment of the tribunal in that while calculating the loss of income due to disability calculations have been made assuming the functional disability to be to the extent of 50 per cent against the then emoluments, though noticing in the same discussion that the element of future prospects of increase, would have effect on promotional prospects, even while, after making an award under the head of pain and suffering, reference is made to the disability to the extent of 45 per cent.

8. The insurer, by its appeal, questions the computation of compensation on the contention that since the claimant has continued to be in the same service, the loss of future income due to disability particularly on the multiplier of 16 is uncalled for.

9. The claimant, on the other hand, presses his appeal to submit that the element of future prospects was not properly considered and factored in. It may be mentioned here that while presenting the appeal the claimant had also raised the issue that on account of the disability suffered, his career has been adversely affected such that he cannot ever be promoted to the higher ranks for which he has not only been an aspirant but also fully qualified.

10. During the course of hearing, however, when a suggestion came that the matter could be remanded to the Tribunal for reconsideration on the material about loss of promotional avenues being properly brought on record by way of additional evidence, it was submitted, on instructions, by the counsel for the claimant that he does not press for any such opportunity for leading additional evidence or for remand.

11. It was brought to the notice of the counsel that there is an apparent error in the impugned judgment since the multiplier of 16, chosen on the basis of age of the claimant on the date of accident, would not be appropriate to compute the loss of future income for the reason that there has been no loss of employment and that for such purposes calculations would need to be made afresh on the multiplier of 9 which would be the proper method with reference to the loss of income post-retirement at the age of 60 years. The counsel for the claimant submitted that he concedes to such calculations being made on the multiplier of 9.

12. Since the claimants' functional disability deserves to be taken as 45% (per cent), and since he has been in regular and permanent employment of the government, the element of future prospects of

increase to the extent of 50% (per cent) would deserve to be added. It is however, also to be borne in mind that post-retirement he would be earning pension which would be equivalent to 50% (per cent) of the emoluments last earned. The loss of future income, thus, would need to be computed on the remainder with the multiplier of 9.

13. The awards towards other damages as granted by the tribunal are found to be just and adequate.

14. Having regard to the above, the loss of future income due to disability is calculated as $(Rs.18941 \times 150 \div 100 \div 2 \times 45 \div 100 \times 12 \times 9)$ Rs.6,90,399/-. The amount of compensation awarded in favour of the claimant in this case, therefore, needs to be reduced by [Rs.18,18,336/- (-) Rs. 6,90,399/-] Rs.11,27,937/-. The compensation in this case, thus, is reduced to (Rs.2194082/- – Rs.1127937/-) Rs.1066145/- rounded off to Rs.1067000/-(Rupees Ten lacs and Sixty Seven Thousand only).

15. It is noted that the rate of interest, that is, 7.5 per cent was awarded by the tribunal is inadequate. In view of the consistent view taken by this Court the rate of interest is increased to 9% (per cent) from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

16. By order dated 23.05.2011 in MAC Appeal No.464/2011, the insurance company had been directed to deposit the entire awarded amount with up to date interest with the Registrar General and from out of such deposit, fifty per cent (50%) was permitted to be released to the claimant. The registry shall now calculate the amount payable

to the claimant in terms of the modification ordered above and release the same to him. If excess amount has been released to the claimant, he shall be liable to refund the same to the insurance company.

17. The statutory amount shall be refunded to the insurance company.

18. The appeals stand disposed of in the above terms.

NOVEMBER 03, 2017

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R.K.GAUBA, J.

